

Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 17, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

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FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 583

[Docket No. P2-95]

Household Goods Forwarders Association of America, Inc., Petition for Exemption

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is amending its regulations to exempt non-vessel-operating common carriers by water from the tariff filing requirement of Part 514 and the bonding requirement of Part 583, to the extent that they transport used household goods and personal effects of federal civilian employees pursuant to a solicitation issued and administered by the General Services Administration. These carriers are already subject to a GSA requirement that they post a performance bond in excess of the Commission's bonding requirement, and the rates for such services will be filed with GSA. The exemption will remove duplicative requirements and result in lower costs.

EFFECTIVE DATE: Effective August 28, 1995.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel,
Federal Maritime Commission, 800
North Capitol Street NW.,
Washington, DC 20573, (202) 523-
5740;

and

Bryant L. VanBrakle, Director, Bureau of
Tariffs, Certification and Licensing,
Federal Maritime Commission, 800
North Capitol Street NW.,
Washington, DC 20573, (202) 523-
5796.

SUPPLEMENTARY INFORMATION: The Household Goods Forwarders Association of America, Inc. ("HHGFAA" or "Petitioner") has filed a Petition for Exemption ("Petition") pursuant to section 16 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1715, and section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app.

833a, and Rule 69 of the Commission's Rules of Practice and Procedure, 46 CFR 502.69. The Petition seeks an exemption for non-vessel-operating common carriers ("NVOCCs") from the tariff filing requirement of 46 CFR Part 514 and the bonding requirement of 46 CFR Part 583, to the extent they engage in the transportation of used household goods and personal effects of employees of federal civilian executive agencies in the domestic and foreign commerce of the United States, pursuant to a solicitation issued and administered by the General Services Administration ("GSA").

Notice of filing of the Petition was published in the **Federal Register**, 60 FR 20494 (April 26, 1995), and interested persons were invited to submit their views. Comments in support of the Petition were submitted by North American Van Lines, Inc., the American Movers Conference ("AMC"), the United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference¹ ("Conference"), and Mr. William P. Hobson, Manager of the Centralized Household Goods Traffic Management Program of GSA. No comments were filed in opposition to the Petition.

The Petition

Petitioner points out that the Commission has previously exempted NVOCCs engaged in the transportation of *military* used household goods and personal effects from the NVOCC tariff filing and bonding requirements, citing 46 CFR 550.1(a)(6), 580.1(c)(7), and 583.3(c). It contends that the same reasons for granting that exemption warrant the tariff and bonding exemption requested herein for used household goods and personal effects of *federal civilian employees* pursuant to a GSA solicitation.

HHGFAA advises that GSA issued an International Tender of Service ("GSA Tender") on January 2, 1995, soliciting bids from carriers for the transportation of used household goods and personal effects of federal civilian employees between points in the United States and foreign points. This procurement will commence on October 1, 1995. HHGFAA members intend to participate in this solicitation.

The GSA Tender sets forth the terms and conditions for participation, including the services to be provided and how rates are to be quoted, and requires each participant to file a performance bond with GSA. GSA ensures that each carrier has the

requisite experience, financial responsibility, a quality control program, and the ability to perform the service. Each participant must provide a performance bond in the minimum amount of \$75,000 or 2.5 percent of the carrier's gross annual revenue derived from the GSA international program for the previous year, whichever is greater, and also must maintain cargo liability insurance in an aggregate minimum of \$150,000.

GSA will establish baseline rates for certain traffic channels. Each qualified NVOCC can then file door-to-door through rates which are a percentage of the GSA baseline rates. The shipments will move on a through Government Bill of Lading ("GBL").

HHGFAA contends that filing tariffs with the FMC covering these GSA international shipments would duplicate the rate-filing requirements of the GSA Tender and would result in unnecessary additional costs. It further submits that the filing of through rates as a percentage of a GSA baseline cannot presently be accomplished under the Commission's tariff rules or ATFI.

HHGFAA further argues that NVOCC bonds would duplicate the GSA bonding requirement, and result in additional, unnecessary costs. Moreover, it claims that the reasons which caused the Commission to exempt used military household goods from tariff filing apply in this case. HHGFAA likewise maintains that the reasons for exempting NVOCCs engaged in the transportation of used household goods exclusively for the Department of Defense from filing bonds warrant a similar exemption here. In this regard, it points out that GSA's bonding requirement is significantly greater than the Commission's.

Comments on Petition

The Conference anticipates substantial GSA program oversight, and therefore has no objection to elimination of the bonding requirement. However, it also argues that an exemption from tariff filing should be conditioned on making such rates publicly available through GSA or another organization.

AMC believes that GSA's Tender would be greatly enhanced by an FMC exemption from tariff filing and bonding. In light of the GSA's stringent standards, AMC submits that there is no need for a separate bonding requirement or tariff filing requirement. AMC further notes that military household goods have been exempt from FMC tariff filing for several years and that this exemption has had no detrimental effects. It believes that the instant GSA rate

¹ Farrell Lines, Inc. and Lykes Bros. Steamship Co. disassociated themselves from these comments.

solicitation will operate in a similar manner.

GSA's Mr. Hobson notes that the GSA Tender covers service to be provided under Government bills of lading at through rates solicited by GSA on a competitive basis. In order to ensure a competitive environment, GSA has established uniform rules and charges governing accessorial charges. In addition, GSA will establish baseline rates, and qualified carriers will submit bids below, above, or at the baseline rates for the traffic channels they wish to serve. The carriers' through rates will be effective for twelve months and available for use by all federal executive agencies. Each carrier must certify that its rates were established independently. Mr. Hobson claims that tariff filing with the Commission would not benefit GSA since all bid rates will be filed with GSA and maintained in its computer. He likewise maintains that an FMC bond is of no benefit since the GSA bond is higher. He argues that the tariff exemption will reduce carriers' costs by relieving them of the expense of filing rates with the FMC, as will the bonding exemption. This, in turn, allegedly should allow carriers to submit lower rates to GSA.

Discussion

Section 16 of the 1984 Act states in pertinent part:

The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

The exemption sought here meets the standards of section 16. It will provide relief from the tariff filing and bonding requirements for NVOCCs who transport federal civilian household goods pursuant to a GSA monitored program and is virtually identical to an exemption that already exists for the transportation of military household goods.

The exemption should not substantially impair effective regulation by the Commission. Although the rates under which this transportation will be provided will not be filed with the Commission, they will be available through GSA. Moreover, these rates only apply to a single shipper, GSA, or the federal civilian agency participating in its program. Accordingly, there should be little or no cause for concern about potential discrimination. The

competitive nature of GSA's program will remain unchanged in that carriers seeking to participate in certain trade lanes will have to competitively bid for the cargo. Lastly, the exemption should be beneficial to commerce. It will remove certain duplicative activities which serve no useful purpose, and should reduce the overall costs for all involved in the GSA program.

Bonds and other forms of surety issued after the effective date of this exemption will contain express language indicating that they do not apply to civilian household goods carried under the GSA program. If, after this date, NVOCCs desire to have this exemption apply to their existing bonds, they can request that the bonding companies reissue their bonds with the appropriate language included.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The exemption will permit NVOCCs who are engaged in the GSA civilian household goods program to reduce their costs by removing duplicative or unnecessary requirements.

This final rule does not contain any collections of information as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 583

Freight, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553, section 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a, and section 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716, Parts 514 and 583 of Title 46, Code of Federal Regulations, are amended as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.3 is amended by adding a new paragraph (b)(5) reading as follows:

§ 514.3 Exemptions and exclusions.

* * * * *

(b) * * *

(5) *Used household goods—General Services Administration.* Transportation of used household goods and personal effects by non-vessel-operating common carriers shipped by federal civilian executive agencies under the International Household Goods Program administered by the General Services Administration is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

* * * * *

PART 583—[AMENDED]

3. The authority citation for Part 583 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. App. 1702, 1707, 1709, 1710–1712, 1716, and 1721.

4. Paragraph (c) of § 583.3 is revised to read as follows:

§ 583.3 Proof of financial responsibility, when required.

* * * * *

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense, or for the account of the federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration, or both, is not subject to the requirements of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense or the General Services Administration.

5. Appendix A to Part 583 is amended by revising the last sentence in the fourth paragraph to read as follows:

Appendix A to part 583—Non-Vessel-Operating Common Carrier (NVOCC) Bond Form

* * * * *

* * * However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

* * * * *

6. Appendix D to Part 583 (Form FMC–69) is amended by revising the last sentence in the fourth paragraph to read as follows:

Appendix D to part 583—Non-Vessel-Operating Common Carrier (NVOCC) Group Bank Form [FMC-69]

* * * * *

* * * However, the bond shall not apply to shipments of used household goods and personal effects for the account of the Department of Defense or the account of federal civilian executive agencies shipping under the International Household Goods Program administered by the General Services Administration.

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By the Commission.

Joseph C. Polking,

Secretary.

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DEPARTMENT OF TRANSPORTATION**Maritime Administration****46 CFR Part 310**

RIN 2133-AB22

[Docket No. R-161]

Merchant Marine Training

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its regulations for the admission and training of midshipman at the United States Merchant Marine Academy to conform them to changes in the law. The amendments are with respect to the nomination and admission to the Academy of persons from American Samoa and Panama and the authority of the Secretary of Transportation to recover from graduates of the Academy costs of their education if they fail to fulfill certain conditions of their service obligations.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Academy Program Analyst, Office of Maritime Labor and Training, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Room 7302, Washington, DC 20590, Telephone: (202) 366-2643.

SUPPLEMENTARY INFORMATION: This rulemaking amends MARAD regulations applicable to the U.S. Merchant Marine Academy (USMMA) to implement provisions of Pub.L. 101-595, as follows: (1) It recognizes that there is now a Delegate to the House of Representatives from American Samoa who may appoint persons to the

Academy. Previously, the Governor of American Samoa had been authorized to appoint persons to the Academy until a delegate to the House of Representatives from American Samoa took office. (2) It reflects the added authority of the Secretary of Transportation (Secretary) to exercise discretion to recover from USMMA graduates the Federal Government's costs for their education if they fail to fulfill certain conditions of their service obligation. Previously, the only consequence of a breach of contract by USMMA graduates was that they be ordered to active military service. (3) It also recognizes the authority of the Secretary of Transportation to allow an unlimited number of Panamanians to be admitted to the Academy on a reimbursable basis. Previously, the Secretary had been limited to allowing six appointments annually, on a reimbursable basis.

Rulemaking Analysis and Notices

Executive Order 12866 (Federal Planning and Review) and DOT Regulatory Policies and Procedures.

This rulemaking is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, and it is not considered to be a significant rule under the Department's Regulatory Policies and Procedures. (44 FR 11034, February 26, 1979). Accordingly, it was not reviewed by the Office of Management and Budget.

A full regulatory evaluation is not required since this rule provides for regulatory costs that are allowed by statute, within the discretion of the Secretary of Transportation.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it merely recognizes changes in the law with respect to the nomination process for the USMMA and the discretion granted to the Secretary to recover costs of education at the USMMA from persons who did not fulfill their service obligations. Accordingly, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(c) and (d), MARAD finds that good cause exists to publish this as a final rule, without opportunity for public comment, and to make it effective on the date of publication.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

List of Subjects in 46 CFR Part 310

Education, Grant programs, Seamen.

PART 310—MERCHANT MARINE TRAINING [AMENDED]

Accordingly, MARAD hereby amends 46 CFR part 310, subpart C as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 204(b), 1301-1308, Merchant Marine Act, 1936, as amended, (46 App. U.S.C. 1114(b), 1295-1295g); 49 CFR 1.66.

§ 310.53 [Amended]

2. Section 310.53(a) is amended as follows:

a. In paragraph (a)(1) by removing the text beginning with the words, "the Governor of American Samoa", preceding the word "may", and inserting in lieu thereof the words, "the Delegate to the House of Representatives from American Samoa."

b. In paragraph (a)(2) in the table by amending the entry for American Samoa by revising the entry under the heading "To be nominated by—" to read "The Delegate to the House of Representatives representing American Samoa."

§ 310.58 [Amended]

3. Section 310.58 is amended in paragraph (e)(2) by adding at the end thereof the following sentence. "If the Secretary of Defense is unable or unwilling to order an individual to active duty, the Secretary of Transportation may recover from the individual the cost of education provided by the Federal Government by requesting the Attorney General to begin court proceedings to recover the costs of that education."